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Dumfries & Galloway
Housing Partnership

Working with our Tenants

www.dghp.org.uk



ANTISOCIAL BEHAVIOUR WHAT HAPPENS IF YOUR CASE REACHES COURT

ASB AND THE COURT PROCESS



WHY MIGHT MY CASE HAVE TO GO TO COURT?

If antisocial behaviour persists, despite DGHP having issued the perpetrator with a written warning and offered the opportunity to sign an Acceptable Behaviour Contract (ABC) - we will take court action.

This can take one of two forms - either an application for an Antisocial Behaviour Order (ASBO) or an application to allow us to evict the perpetrator from the property.

BEFORE IT GOES TO COURT

Before we apply to the court, however, we require evidence to support the case. Evidence that we can use in court includes -

- Details of the antisocial behaviour incidents reported by you
- Corroborating police reports or other independent witness reports supporting the allegations
- Statements from those affected by the antisocial behaviour and a description of what effect it has had/is having on their lives
- Police statements confirming they support

the action proposed and details of their involvement with the person alleged to be carrying out the behaviour

- Evidence of what other informal measures we have used to address the problem behaviour

As part of the investigation, the ASB team will come and take a statement from you. This is to show the impact the alleged behaviour is having on you, and your life. Once we have taken this, we will send it out to you to check it for accuracy. You will need to sign and return this to us. Should your case reach the court stage, the perpetrator will be able to see your statement unless there is justification to anonymise it, such as fear of reprisal etc.

WILL I HAVE TO ATTEND COURT?

Yes, it is possible. If DGHP has to take a case to court we might require your attendance to give evidence. For example, this may be to tell the court about the antisocial behaviour that you have suffered or the effect that it is having on your home life.

If this is required, the Antisocial Behaviour Team will support you every step of the way and, if

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necessary, you can give evidence behind a screen to protect your anonymity.

APPLYING FOR AN ANTISOCIAL BEHAVIOUR ORDER (ASBO)

DGHP can use the Antisocial Behaviour etc (Scotland) Act 2004 to apply to the court for an ASBO in situations where certain criteria are met. The ASBO is used to stop someone from doing certain things - for example, preventing someone from causing noise nuisance within a property, e.g. shouting, screaming, banging or swearing, which can be heard outwith the property.

If this is breached they could be sent to prison for up to five years.

WILL THE COURT GRANT AN ASBO?

When deciding to grant an ASBO, the court has to consider

- Is the person at least 12 years of age
- If the person has committed acts of antisocial behaviour and
- If the ASBO is necessary to protect the victims from further offending behaviour

Owing to legislation dealing with children and

crime, in circumstances where the perpetrator is under the age of 16 we would refer the matter to Dumfries and Galloway Council. Under certain circumstances we may consider action against the parents.

We must provide evidence to the court to support all of this, and we do this through victim statements about the effect the behaviour has had on their lives. We must also show the court that an ASBO would give the victim some relief.

This is why it is crucial that you complete your Antisocial Behaviour diary to record any antisocial behaviour. You must also telephone the police **every time** there is an incident ongoing.

If the police arrive and witness an incident it strengthens the case immensely.

WHAT HAPPENS IF THE ASBO IS IN PLACE AND I STILL SUFFER FROM ANTISOCIAL BEHAVIOUR FROM THE PERPETRATOR, I.E. THE ASBO IS BREACHED?

If the court grants an ASBO we will give you a copy of the order so you can see what the court has prevented the perpetrator from doing. This will allow you to report any breaches of this to

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the police every time it occurs.

If an ASBO is granted, and this is breached, this **must** be reported to the police. There needs to be corroborating evidence to allow the police to bring charges.

If this is the case, the perpetrator will be arrested and detained in custody overnight, before appearing at court the next day. If found guilty they can be punished separately for breaching their ASBO and can face up to five years in prison.

It is for this reason that ASBOs are not granted lightly and DGHP must show that we have tried everything else possible to tackle this behaviour. This is where your evidence is crucial to us - the court cannot go on our 'say so' alone.

WHAT HAPPENS WHILE I'M WAITING FOR THE CASE TO REACH COURT?

When applying for an ASBO we will ask the court to make an interim order - a temporary order put in place immediately while the full order is going through the court.

This will allow some immediate relief for the victim and could be put in place before any of the potential court delays kick in.

We want victims to be given protection whilst the court process is ongoing.

EVICTING THE PERPETRATOR

If antisocial behaviour continues DGHP will consider all possible means to secure the tenant's eviction. This may be by converting the tenancy to a Short Scottish Secure Tenancy (SSST) providing that the legal criteria are satisfied or by raising an eviction action on the grounds of causing antisocial behaviour.

This requires DGHP to demonstrate that the perpetrator has caused antisocial behaviour and it is reasonable to evict under the circumstances. When considering whether or not it is reasonable the court will look at a number of things, including -

- The tenant's family circumstances;
- Who else stays in the property
- Any medical conditions and
- Any other factor that might be relevant in their decision

WILL MY CASE BE AFFECTED BY COURT DELAYS?

The short answer is yes. Sometimes the legal process will result in delays which are outwith DGHP's control. The times when delays can happen, include:

- Application for legal aid - if the perpetrator makes an application for this, it can take several weeks for a decision. This will mean the court will not hear the case until a decision has been made. The perpetrator is entitled to legal representation to defend themselves.
- Pressures of court business - if a case is defended, the court may need to fix an evidential hearing where both sides will have

to call witnesses and experts to prove their case. These hearings can take some time and as result special dates need to be fixed when the Sheriff has time to hear the application. Again, this can take several weeks after the application is lodged and, unfortunately, there is nothing that DGHP can do to speed this up.

REMEMBER - DGHP IS WORKING FOR YOU AND WE WILL KEEP YOU INFORMED THROUGHOUT

While it may appear that DGHP is not progressing fast enough with your case, please understand that we will be doing everything we can. However, there are factors outwith our control and if there are delays we will keep you fully informed at all stages and write to you with updates to let you know when we expect the case to move forward.

We ask that you are patient and rest assured we are working with you, and for you. We will do everything in our power to get your case to a resolution.

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A REMINDER

WHAT IS ANTISOCIAL BEHAVIOUR?

Antisocial behaviour can be a number of things, but the law defines it as -

- When someone acts in a way that causes, or is likely to cause, alarm or distress
- If someone follows a path of behaviour that causes, or is likely to cause, alarm or distress to at least one other person who is not in the same household

The most common examples of antisocial behaviour include -

- Someone having a party with loud music
- People shouting, screaming or fighting within communal entry ways - or if it is so loud that it can be heard outwith the property
- Someone having a large number of people within their property, which in turn causes an unreasonable level of noise, which can be heard outside the property

WHAT IS NOT ANTISOCIAL BEHAVIOUR?

Some examples of issues which are not classed as antisocial behaviour include -

- Normal domestic living noise such as people opening and closing internal doors or kitchen cupboards
- Running the washing machine or vacuum cleaner
- Normal levels of dog barking
- People parking in the wrong place
- Someone leaving their wheelie bins out in the street
- Children playing
- Any personal comments made on social media sites such as Facebook, Twitter etc.

It is very important that people who live in flats or semi-detached houses be aware of their neighbours and remember that noise can travel through walls and floors. Please be courteous towards your neighbours in order to prevent disputes from arising.

ALTERNATIVE FORMATS

This publication is also available on tape,
in Braille, large print and community languages.

For information contact DGHP's Customer Service Centre
on:

NETWORK RATE 0845 606 3447

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